

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

IN RE:

INTERPHASE CORPORATION

Debtor

Case No. 15-41732  
Chapter 7

**MOTION OF CHAPTER 7 TRUSTEE FOR AN  
ORDER APPROVING THE SALE OF CERTAIN ASSETS OF THE  
DEBTOR'S ESTATE FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND  
ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 105 AND 363 AND RELATED RELIEF**

**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.**

Mark A. Weisbart, Chapter 7 trustee (the "Trustee") for the bankruptcy estate (the "Estate") of the above captioned debtor (the "Debtor"), requests the entry of an order approving the sale of certain assets of the Debtor's Estate to Oak Point Partners, Inc. ("Oak Point") free and clear of liens, claims, interests, and encumbrances pursuant to 11 U.S.C. §§ 105 and 363, and related relief (the "Motion"). In support of the Motion, the Trustee respectfully states as follows:

**JURISDICTION**

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue of this proceeding and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
2. The statutory predicates for the relief sought herein are sections 105(a) and 363 of Title 11 of Chapter 11 of the United States Code (the "Bankruptcy Code"), as well as Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

## **BACKGROUND**

3. On September 30, 2015, the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, and shortly thereafter, the Trustee was appointed as the Chapter 7 trustee for the Debtor's Estate.

4. Since being appointed, the Trustee has administered the Debtor's Estate for the benefit of its creditors in accordance with his power and duties. The Trustee is now in the process of winding down the administration of this case. To that end, the Trustee is engaged in efforts to ensure that the maximum value of the Estate's remaining assets is realized, which efforts include pursuing the sale of any remaining assets.

5. The Trustee has determined that there may exist property of the Debtor's Estate, consisting of known or unknown claims, property rights, or assets, which have not been previously sold, assigned, or transferred (collectively, the "Remnant Assets"). The Trustee has determined that the cost of pursuing the Remnant Assets will likely exceed the benefit that the Estate would possibly receive on account of the Remnant Assets.

6. The Trustee and Oak Point have negotiated an agreement (the "Purchase Agreement") for the sale of the Remnant Assets. A copy of the Purchase Agreement is appended hereto as Exhibit "A".

## **REQUESTED RELIEF**

7. By this Motion, the Trustee seeks the entry of an order pursuant to 11 U.S.C. §§ 105 and 363(b), (f), and (m), as well as Bankruptcy Rule 6004, (a) authorizing the Trustee to sell the Remnant Assets free and clear of all liens, claims, interests, and encumbrances; and (b) approving the terms of the Purchase Agreement.

8. The Purchase Agreement generally provides for an aggregate purchase price of \$40,000.00 (the "Purchase Price") to be paid by Oak Point to the Trustee for the benefit of the

Debtor's Estate.

9. In accordance with the Purchase Agreement, the Remnant Assets do not include (i) cash held by the Trustee in his trust account; and (ii) the Purchase Price for the Remnant Assets.

10. In the Trustee's business judgment, the Purchase Price represents a fair and reasonable sales price for the Remnant Assets, and represents the highest and best offer for the sale of the Remnant Assets. Additionally, the benefit of receiving immediate payment for the Remnant Assets, which are largely unknown, outweighs the potential benefits of retaining the Remnant Assets. Finally, the Trustee believes that the cost of pursuing the Remnant Assets will likely exceed the benefit that the Estate would possibly receive.

#### **BIDDING PROCEDURES**

11. A deadline (the "Response Deadline") by which objections or responses to this Motion must be filed with the Court is set forth in the opening paragraph of this Motion (the "Notice").

12. While the Trustee is prepared to consummate the sale of the Remnant Assets to Oak Point pursuant to the terms set forth herein and in the Purchase Agreement, in the event a party other than Oak Point (each, an "Interested Bidder") wishes to purchase the Remnant Assets, the Trustee requests that the Court approve the following overbid procedures (collectively, the "Bidding Procedures"):

- a. Each Interested Bidder who wants to participate in the overbid process must notify the Trustee of its intention to do so in accordance with the Notice on or before the Response Deadline;
- b. each initial overbid for the Remnant Assets must be at least \$5,000.00;
- c. each Interested Bidder must submit a cashier's check to the Trustee in the amount of such Interested Bidder's initial overbid; and
- d. in the event a party other than Oak Point is deemed the winning bidder with respect to the Remnant Assets, such other party shall be required to purchase the Remnant

Assets under the same terms and conditions as set forth in the Purchase Agreement.

13. The Trustee believes that the private sale of the Remnant Assets in accordance with the terms of the Purchase Agreement and these Bidding Procedures, and as otherwise provided herein, serves the best interests of the Debtor's Estate, creditors and other stakeholders, as the sale will allow the Trustee to realize additional funds for the benefit of the Estate. Accordingly, the sale to Oak Point should be approved as requested.

**AUTHORITY FOR REQUESTED RELIEF**

14. Section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Moreover, Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

15. To approve use, sale or lease of property outside the ordinary course of business, the Court must find that such sale is supported by the sound business judgment of the debtor or trustee, as the case may be. *See In re Martin (Myers v. Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Pa. Inc.*, 788 F. 2d 143 (3d Cir. 1986) (requiring good faith purchasing); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (Bankr. D.Del. 1991) (holding that transactions should be approved under Section 363(b)(1) when: (a) they are supported by the sound business judgment of a debtor's management; (b) interested parties are provided with adequate and reasonable notice; (c) the sale price is fair and reasonable; and (d) the purchaser is acting in good faith); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); and *In re Phoenix Steel Corp.*, 82 B.R. 334, 335 (Bankr. D.Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a chapter 11 case are “that

the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith.”).

16. A trustee’s showing of sound business judgment, in turn, need not be unduly exhaustive; instead the trustee is “simply required to justify the proposed disposition with sound business reasons.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a sale depends upon the facts and circumstances of each case. *See Lionel*, 722 F.2d at 1071. Bankruptcy courts are given substantial discretion in deciding whether to authorize a sale of a debtor’s assets outside of the ordinary course of business. *See In re Chateaugay Corp.*, 973 F.2d 141, 144 (2d Cir. 1992).

17. The Trustee submits that the sale of the Remnant Assets pursuant to the Purchase Agreement and the Bidding Procedures presented above represents a prudent and proper exercise of business judgment, and is in the best interest of creditors of the Debtor’s Estate. Specifically, the Purchase Agreement was negotiated at arm’s length and in good faith, and the Trustee believes that the Purchase Price is reasonable and represents fair value. Moreover, a private sale is appropriate because any costs associated with an auction of the Remnant Assets would likely exceed the Purchase Price and, in turn, any benefit to the Estate.

18. Moreover, based on the foregoing, Oak Point should be deemed a good faith purchaser. Although the Bankruptcy Code does not define “good faith purchaser,” the United States Court of Appeals for the Third Circuit construing section 363(m), has stated that “the phrase encompasses one who purchases in ‘good faith’ and for ‘value’.” *In re Abbott’s Dairies of Pa., Inc.*, 788 F.2d at 147; *See also In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 8 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); and *In re Vanguard Oil & Serv. Co.*, 88 B.R. 576, 580 (E.D.N.Y. 1988).

19. Additionally, section 363(f) of the Bankruptcy Code permits a trustee to sell assets

free and clear of all interests which may be asserted against such assets, with any such interests attaching to the net proceeds of the sale, if subject to the rights and defenses of a debtor with respect thereto:

- a. Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- b. Such entity consents;
- c. Such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- d. Such interest is in bona fide dispute; or
- e. Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). As Section 363(f) of the Bankruptcy Code is stated in the disjunctive, when proceeding pursuant to Section 363(b), it is only necessary to meet one of the five conditions of Section 363(f). To the extent that there are interests that may be asserted in the Remnant Assets, the Trustee believes that one or more of the aforementioned conditions have been satisfied.

20. Finally, the Trustee's proposed Bidding Procedures are appropriate and should be approved by the Court. Courts have routinely held that when the sale of assets in bankruptcy is done on a competitive bidding basis, as is proposed herein, it is appropriate to require parties submitting competing bids to submit bids that exceed the existing bid by a specified amount. See, e.g., *In re Financial News Network Inc.*, 931 F.2d 217 (2d Cir. 1991). Oak Point has expended, and will continue to expend, considerable time, money, and energy evaluating the purchase of the Remnant Assets as proposed herein, and has engaged in good faith, arm's length negotiations with the Trustee.

21. As set forth herein, the Trustee submits that the sale of the Remnant Assets is a prudent exercise of its business judgment under the circumstances, and is in the best interest of the Debtor's Estate and creditors. Indeed, the Trustee is not aware of any future assets or claims

that may be liquidated, obtained or otherwise administered, and absent the sale to Oak Point, the Debtor's Estate would not realize any benefits on account of the Remnant Assets. Finally, the Purchase Price for the sale is reasonable and has been negotiated at arm's length. Therefore, the Trustee respectfully requests that the Court grant the Motion.

**WAIVER OF STAY OF ORDER**

22. Pursuant to Bankruptcy Rule 6004(h), an order authorizing the sale of property is stayed for fourteen (14) days after the entry of the order unless the Court orders otherwise. The Trustee requests that the Court order that such stay not apply with respect to the sale of the Remnant Assets.

**NOTICE**

23. Notice of this Motion has been given to the Debtor, the Office of the United States Trustee, Oak Point, and all parties requesting notice pursuant to Bankruptcy Rule 2002. The Trustee submits, and requests that this Court determine, that such notice is proper and adequate; no further notice is required; and that other and further notice be waived.

WHEREFORE, the Trustee respectfully requests entry of an order authorizing the sale of the Remnant Assets pursuant to the terms of the Purchase Agreement, waiving the fourteen-day stay under Bankruptcy Rule 6004(h), and granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

/s/ Mark A. Weisbart

Mark A. Weisbart

Texas Bar No. 21102650

THE LAW OFFICE OF MARK A. WEISBART

12770 Coit Road, Suite 541

Dallas, Texas 75251

(972) 628-4903 Phone

mark@weisbartlaw.net

COUNSEL FOR CHAPTER 7 TRUSTEE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing instrument was served on the parties on the attached mailing list either through the Court's electronic notification system as permitted by Appendix 5005 III. E. to the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Texas, or by first class United States Mail, postage prepaid on this the 26<sup>th</sup> day of October, 2017.

/s/ Mark A. Weisbart

Mark A. Weisbart

**ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of October 26, 2017, is by and between **MARK A. WEISBART**, not individually, but solely as chapter 7 trustee (“Trustee” or “Seller”) of the **INTERPHASE CORPORATION** (“Debtor”) **BANKRUPTCY ESTATE** (“Estate”) and **OAK POINT PARTNERS, INC.** (“Purchaser”).

**WITNESSETH:**

**WHEREAS**, on September 30, 2015 (“Petition Date”), the Debtor filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Texas, Sherman Division (“Court”), assigned Case No. 15-41732 (“Case”); and

**WHEREAS**, shortly after the Petition Date, the Trustee was appointed as chapter 7 trustee of the Debtor’s Estate; and

**WHEREAS**, at the time of the execution of this Agreement and continuing into the future, there may be property of the Estate remaining, consisting of known or unknown assets or claims which have not been previously sold, assigned, or transferred (collectively, “Remnant Assets”); and

**WHEREAS**, Remnant Assets specifically **exclude**: (a) cash held at the time of this Agreement by the Debtor or Trustee in bank accounts earmarked for distribution to creditors and/or payment of professional fees; and (b) the Purchase Price (as hereinafter defined) to be delivered pursuant hereto; and

**WHEREAS**, subject to Court approval, Seller has the power and authority to sell and assign all right, title and interest in and to the Remnant Assets to Purchaser, including, but not limited to the proceeds thereof.

**NOW THEREFORE**, in consideration of the promises and mutual undertakings herein contained, Seller and Purchaser agree as follows:

1. **Purchase Price.** The Purchase Price shall be good funds in the amount of Forty Thousand and No/100 Dollars (\$40,000.00) payable within 3 business days of receipt by Purchaser of this executed Agreement and the entry of a non-appealable Order of the Court approving this Agreement (the “Approval Order”).
2. **Assignment of Remnant Assets.** Seller hereby irrevocably and unconditionally sells, assigns, transfers and conveys to Purchaser all of the Seller’s right, title and interest under, in and to the Remnant Assets, as well as any and all claims and rights related to the Remnant Assets, including, without limitation, all cash, securities, instruments and other property that may be paid or issued in conjunction with the Remnant Assets and all amounts, interest, and costs due under the Remnant Assets.
3. **Authority to Sell.** Subject to Court approval, the sale of the Remnant Assets by the Seller is made pursuant to the authority vested in the Seller.
4. **Payments Received on Remnant Assets.** Seller further agrees that any payments received by Seller on account of any Remnant Assets shall constitute property of the Purchaser to which the Purchaser has an absolute right, and that Seller will promptly deliver such payment to Purchaser at Purchaser’s address set forth below.

5. **Seller's Representations and Warranties.** In consideration of Purchaser's agreements herein and to induce Purchaser to enter into this Agreement, Seller represents and warrants to Purchaser that Seller, pursuant to the Approval Order, has full lawful right, title, power and authority to enter into this Agreement and to convey Seller's rights, title and interests, if any, to Purchaser in the Remnant Assets as is set forth in this Agreement.

**EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE SELLER SELLS, ASSIGNS, AND TRANSFERS THE REMNANT ASSETS TO THE PURCHASER "AS IS, WHERE IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED OR IMPOSED BY LAW.**

6. **Free and Clear Sale.** The sale of Remnant Assets shall be free and clear of any liens, claims, or encumbrances pursuant to 11 U.S.C. § 363(f).

7. **No Assumption of Liabilities.** The parties agree that Purchaser is acquiring only the Remnant Assets and that Purchaser is neither acquiring nor assuming any liabilities of the Seller under this Agreement, except as may otherwise expressly be provided herein.

8. **Documents of Assignment.** From time to time upon request from Purchaser, but in no event following closure of the Case, Seller shall execute and deliver to Purchaser such documents reasonably requested by Purchaser to evidence and effectuate the transfer contemplated by this Agreement in a form reasonably acceptable to the parties hereto. However, Purchaser shall reimburse Seller for its reasonable costs associated with such compliance.

9. **Limited Power of Attorney.** Solely with respect to the Remnant Assets, and to the extent permitted by law, Seller hereby irrevocably appoints Purchaser as its true and lawful attorney and authorizes Purchaser to act in Seller's stead, to demand, sue for, compromise and recover all such amounts as now are, or may hereafter become, due and payable for or on account of the Remnant Assets herein assigned. Seller grants unto Purchaser full authority to do all things necessary to enforce the Remnant Assets and its rights thereunder pursuant to this Agreement.

10. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between Seller and the Purchaser and supersedes any and all prior agreements and understandings with respect to the subject matter hereof. This Agreement may not be amended or in any manner modified unless such amendment or modification is in writing and signed by both parties.

11. **Benefits and Binding Effect.** All provisions contained in this Agreement or any document referred to herein or relating hereto shall inure to the benefit of and shall be binding upon the respective successors and assigns of Seller and the Purchaser.

12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas, without giving effect to choice of law principles of the State of Texas.

13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument, and copies or facsimiles of execution signatures shall be equivalent to original signatures.

[remainder intentionally left blank; signature page follows]

**THIS AGREEMENT** has been duly executed as of the day and year first above written.

**OAK POINT PARTNERS, INC.**

By: Eric A. Linn  
Name: ERIC LINN  
Its: President

Address (*for regular mail and mail forwarding*): PO Box 1033, Northbrook, IL 60065-1033  
Address (*for overnight delivery*): 5215 Old Orchard Road, Suite 965, Skokie, IL 60077  
tel (847) 577-1269 fax (847) 655-2746

**INTERPHASE CORPORATION BANKRUPTCY ESTATE**

By: Mark A. Weisbart  
Name: MARK A. WEISBART  
Its: Chapter 7 Trustee

Address: c/o The Law Office of Mark A. Weisbart, 12770 Coit Rd., Ste 541, Dallas, TX 75251  
tel (972) 628-4903

Label Matrix for local noticing  
0540-4  
Case 15-41732  
Eastern District of Texas  
Sherman  
Thu Oct 26 15:31:29 CDT 2017

Arrow Electronics Inc.  
c/o NAC Risk Recovery  
9201 E. Dry Creek Road  
Englewood, Co 80112-2818

Alcatel-Lucent International  
William Hagerman  
1960 Lucent Lane  
Naperville, IL 60563-1594

Anydata Corporation  
5 Oldfield  
Irvine, CA 92618-2840

Evan R. Baker  
1601 Elm Street  
Suite 3000  
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Bankruptcy Section MS A340  
Franchise Tax Board  
P O Box 2952  
Sacramento, CA 95812-2952

CBT Technology Inc.  
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10 Mupac Drive  
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c/o Laurie Spindler Huffman  
Linebarger Goggan Blair & Sampson, LLP  
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Dallas, TX 75207-2328

Comptroller of Public Accounts  
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PO Box 12548  
Austin TX 78711-2548  
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Computershare Trust Co. Inc.  
100 University Ave, 8th Fl.  
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Denton County  
c/o Lee Gordon  
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Department Of Health and Human Services  
Jeffrey Grant  
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Finnish Tax Administration  
Collection and Recovery Unit of  
Southern Finland  
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FI-0052-Vero Finland

Future Electronics  
c/o Diane Svendsen  
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Bolton, MA 01740-1134

GECITS - Bankruptcy  
P O Box 13708  
Macon, GA 31208-3708

GENBAND US LLC AND ITS SUBSIDIARIES  
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 2441 Northeast Parkway  
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 Tyler, TX 75702-7231

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VL Capital Management LLC  
 319 West 101st Street, Apartment 5  
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Washington State Department  
 Of Labor & Industries  
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Mark A. Weisbart  
 The Law Office of Mark A. Weisbart  
 12770 Coit Road, Suite 541  
 Dallas, TX 75251-1366

Yoram Solomon  
 2700 Big Creek Ct.  
 Plano, TX 75093-3362

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Lee Gordon  
 McCreary Veselka Bragg & Allen, PC  
 PO Box 1269  
 Round Rock, TX 78665

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d)Mark A. Weisbart  
 The Law Office of Mark A. Weisbart  
 12770 Coit Road, Suite 541  
 Dallas, TX 75251-1366

(d)Mark A. Weisbart  
 The Law Office of Mark A. Weisbart  
 12770 Coit Road, Suite 541  
 Dallas, TX 75251-1366

End of Label Matrix	
Mailable recipients	47
Bypassed recipients	2
Total	49